

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

ADA L. CARMONA-RIVERA,

Plaintiff,

v.

THE COMMONWEALTH OF PUERTO  
RICO, et al.,

Defendants.

Civil No. 04-1318 (JAF)

**O R D E R**

On March 31, 2005, we granted Defendant FMPR's summary judgment motion. Docket Document No. 78. In a subsequent compliance motion, Plaintiff continued to incorporate FMPR as an active party to the suit, Docket Document No. 120, prompting us to reiterate that the claims against Defendant FMPR had been dismissed. Docket Document No. 135.

Based on our decision, Defendant FMPR moves for attorney's fees and costs pursuant to Rule 54(d) of the Federal Rules of Civil Procedure and Local Rule 54. Docket Document No. 158. Plaintiff opposes the motion. Docket Document No. 162.

Generally, in the absence of legislation providing otherwise, litigants must pay their own attorney's fees. Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 415 (1978). Although under selected statutes, Congress has provided for the prevailing party to obtain attorney's fees, the ADA, like other civil rights laws, is "more

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1 flexible . . . entrusting the effectuation of the statutory policy to  
2 the discretion of the district courts." Id. at 416; see Bercovitch v.  
3 Baldwin School, Inc., 191 F.3d 8, 11 (1st Cir. 1999) (holding that the  
4 Title VII standard applies to other civil rights statutes, including  
5 the ADA). Under the ADA, considerations as to whether to award a  
6 prevailing defendant attorney's fees are especially stringent.  
7 "[A]ttorney's fees may not be awarded to a prevailing defendant under  
8 the ADA unless the defendant establishes that the plaintiff's suit  
9 was totally unfounded, frivolous, or otherwise unreasonable or that  
10 the plaintiff continued the litigation after it clearly became so."  
11 Bercovitch, 191 F.3d at 11 . In civil rights cases, "fee-shifting in  
12 favor of a prevailing plaintiff is the rule, whereas fee-shifting in  
13 favor of a prevailing defendant is the exception." Casa Marie Hogar  
14 Geriatrico, Inc. v. Rivera-Santos, 38 F.3d 615, 618 (1st Cir. 1994).

15 In determining whether to award a prevailing defendant  
16 attorney's fees, a court must, therefore, "resist the understandable  
17 temptation to engage in *post hoc* reasoning by concluding that,  
18 because a plaintiff did not ultimately prevail, his action must have  
19 been unreasonable or without foundation." Christiansburg Garment  
20 Co., 434 U.S. at 421-22.

21 We find that Plaintiff's suit against Defendant FMPR was not so  
22 unreasonable as to justify an award of attorney's fees. There is no  
23 indication that Plaintiff's claim was frivolous or entirely  
24 groundless. Plaintiff's claim against FMPR was based on a concern

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1 that it failed to represent her with the zealousness that she  
2 deserved. Docket Document No. 87. Plaintiff supported her case by  
3 pointing to union claims that Defendant FMPR withdrew on her behalf  
4 without notifying her. Id. While we ultimately determined that  
5 FMPR's representation was adequate and that its withdrawals did not  
6 reach the level of arbitrary and discriminatory conduct, Defendant's  
7 argument that Plaintiff's case was, therefore, unreasonable and  
8 justifies attorney's fees is the type of post-hoc reasoning this  
9 court must avoid. Christiansburg Garment Co., 434 U.S. at 421-22.  
10 Although Plaintiff's claim was unsuccessful, it did not fall to the  
11 level of frivolousness which would require us to burden her with  
12 attorney's fees.

13 However, we find that it was unreasonable for Plaintiff to  
14 articulate surviving claims against Defendant FMPR after our  
15 March 31, 2005 order unequivocally dismissing such claims. As we  
16 noted in a subsequent order, Plaintiff's counsel's behavior was  
17 unprofessional, and caused unnecessary work and confusion for all  
18 parties involved. Docket Document No. 135.

19 Accordingly, we award attorney's fees incurred as a result of  
20 Plaintiff's continued litigation against Defendant FMPR after it was  
21 abundantly clear that no claims against Defendant FMPR survived.  
22 Christiansburg, 434 U.S. at 421 (finding that attorney's fees may be  
23 awarded when "plaintiff continued to litigate after it became" clear  
24 that the case was fruitless). In determining the amount of the

